STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 25, 2022

IN THE MATTER OF:
Appeal Board No. 623311

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations, disqualifying the claimant from receiving benefits, effective October 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, disqualifying the claimant from receiving benefits, effective October 1, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 1, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed April 28, 2022 (), the Administrative

Law Judge granted the claimant's application to reopen A.L.J. Case No. 022-03779, overruled the initial determination of misconduct and sustained the initial determination of voluntary separation.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of voluntary separation. The Board considered the arguments contained in the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed for over twenty-two years as the donor registrar in the blood donation room for the employer, a hospital. The employer notified employees by email, memorandum and on their intranet site, that all employees were required to receive their first dose of the Covid-19 vaccination by September 27, 2021, or face discharge. The claimant was aware of this requirement. The employer had no discretion, as of September 1, 2021, to allow for religious exemptions for its healthcare employees.

The claimant is a Pre-Constantine Christian who does not believe in accepting any foreign substances into her body. In the past, she has received vaccinations. She takes no medications and uses natural remedies, natural oils, and herbal supplements.

The claimant did not receive her first dose of the Covid-19 vaccine on or before September 27, 2021. Consequently, the employer placed the claimant on unpaid leave as of October 1, 2021, and the claimant was then discharged, as of October 3, 2021.

OPINION: The credible evidence establishes that the claimant's employment ended because she refused to receive the COVID-19 vaccine, a condition of her continued employment. We note that the claimant was aware of this requirement and its applicability to her employment as a healthcare worker and that she could not continue her employment without compliance. If the claimant had been vaccinated, as required, she could have continued in her employment.

A provoked discharge occurs when a claimant voluntarily violates a legitimate, known obligation, leaving the employer no choice but discharge. A provoked discharge is considered a voluntary leaving of employment without good cause and constitutes a disqualification from the receipt of benefits. (See Matter of DeGrego, 39 NY2d 180 [3d Dept.1976]). In the case herein, the obligation in question was compliance with the employer's vaccine requirement. The requirement was put in place to abide by New York State's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic.

Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease. (See Matter of Garcia v. New York City Dept. of Health & Mental Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children

attending childcare programs in New York City; Matter of C.F. v. New York City Dept of Health & Mental Hygiene, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and Matter of New York City Mun. Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo, 64 NY2d 233, 237-40 [1984]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established to comply with the State of New York's mandate that all healthcare workers be vaccinated against COVID-19 during the worldwide pandemic. Because of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of employees and

patients, we find that the emergency regulation, requiring all healthcare workers to be vaccinated against COVID-19, was justified by a compelling governmental interest. We therefore find that the employer's requirement that the claimant be vaccinated was a legitimate, known obligation and that the employer had no choice but to end the claimant's employment when she declined the vaccination.

We now turn to the claimant's contention that her refusal was due to religious concerns. The Supreme Court of the United States has held that "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." (See Employment Div. v. Smith, 494 US 872, 879 [1990]). The Supreme Court determined that, so long as the law is neutral and not aimed at a specific religion, generally applicable, and pertaining to an area of law that the government can regulate, it cannot be preempted by a religious practice. In the matter now before us, there is no allegation that the state cannot regulate the healthcare industry, that the law is not generally applicable to those in that industry, or that it targets a specific religion.

Significantly, the mandate allowed for no religious exemptions after September 2021. In Dr. A et al v. Hochul, 142 S.Ct. 552, 211 L. Ed. 2d. 414 (2021), the Supreme Court denied an application for injunctive relief in a challenge to New York State's law removing religious exemptions from its COVID-19 vaccine mandate for hospital workers, cert. denied, 142 S. Ct. 2569 (2022). Additionally, the Second Circuit, in We the Patriots USA, Inc. v. Hochul, 17 F.4th 266 (2d Cir. 2021), upheld New York's COVID-19 vaccine mandate for hospital employees without religious exemptions. The Supreme Court has also upheld the vaccine requirement for healthcare workers in healthcare facilities receiving Medicare or Medicaid funds. (See Matter of Biden v. Missouri, 211 L. Ed. 2d. 433 [2022]).

We conclude, then, that the claimant has offered neither a reliable nor a reasonable excuse for refusing the vaccination. In failing to receive the vaccination, the claimant has left the employer no choice but to discharge her as required by the New York State mandate. Accordingly, we conclude that the claimant was therefore disqualified from unemployment insurance benefits as of October 1, 2021.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 1, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER